

IN THE SUPREME COURT OF OHIO
2019

STATE OF OHIO,

Case No. 2019-0155

Plaintiff-Appellee

-vs-

On Appeal from the
Fifth District Court
of Appeals, Muskingum
County

LANCE A. SMITH

Defendant-Appellant

Court of Appeals
Case No. CT2017-0066

**PLAINTIFF-APPELLEE'S OBJECTION TO DEFENDANT-APPELLANT'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

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STATEMENT OF THE CASE AND THE FACTS

Facts:

Cherie Bronkar, (“Bronkar”), lives in Muskingum County, but works at Kent State University Tuscarawas as the library director. (Trial, p. 53). She used to be in a relationship with Appellant, Lance Smith. (Trial, p. 53). After they ended their relationship, Appellant began texting her until she stopped responding and then he started using social media. (Trial, p. 54). First, he used Twitter on her boss’s tweet, the dean of the university, then he did it on the president of the university’s twitter. (Trial, p. 55). The president, the dean, the library all had Twitter accounts, used as a way of contacting students and marketing services. (Trial, p. 57). Appellant was tweeting about how she would solicit black men. (Trial, p. 58). When Appellant would get blocked, he’d move to other social media sources. (Trial, p. 59).

When Appellant first started posting on the university’s Yelp page, the university did not have a Yelp page, Appellant created it. (Trial, p. 69). Someone from the university’s public relations department had to go on and claim the page for the university before they could begin removing Appellant’s posts. (Trial, p. 69). It would take three (3) days to a week to take down Appellant’s posts from Yelp. (Trial, p. 71).

Students saw the posts and were afraid that Appellant would come to shoot Bronkar and that they would possibly get shot, so they asked Bronkar to leave the campus. (Trial, p. 74).

Posts were made after Appellant was served with the Civil Stalking Protection Order (“CSPO”). (Trial, p. 31). He made posts before he was served and also posts after he was served with the CSPO. (Trial, p. 31). All charges were for posts made after he was served with the CSPO. (Trial, p. 32). He admitted he received the protection order. (Trial, p. 19).

Trial Exhibits 1-7 correlate to counts 1-7. (Trial, p. 34). Exhibit 1 is a post to Yelp by Appellant on Kent State University Tuscarawas. (Trial, p. 34). Exhibit 2 is a post by Appellant on the Kent State University Academic Learning Commons Facebook page. (Trial, p. 34-35). Bronkar works in that branch at the university. (Trial, p. 35).

Exhibit 3 is a picture that was added to the post contained in Exhibit 1. (Trial, p. 35).

Exhibit 4 is a post by Appellant to the Tuscarawas branch library, it depicts a book which is titled Nympho Librarian, and captions “The prim miss took off more than her mask of respectability behind the stacks with any man who asks.” (Trial, p. 35). It was posted to Bronkar’s employer. (Trial, p. 35).

Exhibit 5 is a number of risqué pictures of Bronkar that were taken while Bronkar and Appellant were dating with captions of: “totally innocent looking librarian, huh” and “innocent, oh yeah”. (Trial, p. 36). Another photograph shows Bronkar sitting in a chair and you can see her underwear with the caption: “no comment on that one”. (Trial, p. 36). Bronkar is in lingerie and the photographs show her face; Appellant posted them to her employer’s Yelp page. (Trial, p. 36).

The posts were not reviewing anything about the university, but were to embarrass and harass Bronkar. (Trial, p. 37). Part of her job was to review and make postings on the university’s library Facebook page. (Trial, p. 82, 101).

Exhibit 6 and 7 are a series of pictures posted by Appellant, the first one on Kent State’s Yelp, it is a picture of Appellant and Bronkar with the caption” the librarian doesn’t like black guys, trust me, even the ones from her high school, Philo, Ohio. Who knew it’s all fake. Vacation with hell,” dated December 29, 2016. (Trial, p. 37). There were more photographs tied to that post, one of an unidentified black person and unidentified white person with the caption

“don’t even think about it here. I did and it’s costing me dearly.” (Trial, p. 37). Another photograph appears to be a person being pushed onto a stretcher, likely from the actual Kent State shooting. (Trial, p. 38). Then another photograph is of an iPhone and a gun with the caption “don’t shoot too many texts. You may wind up in court.” (Trial, p. 38). Another depicts the scales of justice captioned “when racism is law and prejudice is policy”, and Appellant posts on that “privilege used and winning.” (Trial, p. 38). Then another photograph is one of the famous Kent State shooting photographs with the caption “Some do not deserve leniency, especially after being presented with other options. I am sad for you. You are vicious for no real reason. Privilege abuse.” (Trial, p. 38).

Detective Mahle spoke with Appellant about all the posts, Appellant admitted to posting all of them. (Trial, p. 19, 39).

Bronkar was at home when she found out, learned about, and reviewed these posts; she lives in Muskingum County. (Trial, p. 39-40, 87). It affected her work, made her afraid, (Trial, p. 89-90). She was terrified because an ad was put in Craigslist soliciting men, and men started contacting Bronkar. (Trial, p. 91-92).

Appellant told Bronkar the police could not help her, that he’s the dragon and was going to attack her. (Trial, p. 97). He affected her attempt to get a new job. (Trial, p. 102). He wanted Bronkar to stop contacting the police because they could not help her. (Trial, p. 78).

Case:

Appellant had three cases for various harassment issues involving the victim, Cherie Bronkar. This appeal deals with the third case wherein Appellant was charged with seven counts of Violation of Protection Order, each a misdemeanor of the first degree; seven counts of

Telecommunication Harassment, each a misdemeanor of the first degree; and two counts of Menacing by Stalking, each a misdemeanor of the first degree.

Appellant was represented by David Mortimer on all three (3) cases, and a plea deal was worked out for the first two cases, which Appellant pled No Contest to and was found guilty. A plea deal was being worked out on the third case, but never came to fruition. Instead, Appellant wanted to represent himself and have a trial.

Mortimer filed a motion to continue the trial date and another motion to withdraw from the case. Appellant also filed a motion to waive a jury trial. The trial court held a hearing on July 3, 2017, to address the pending motions. Mortimer was permitted to withdraw, Appellant was permitted to represent himself, the motion to waive jury was granted, and the motion to continue was denied.

Trial began and concluded on July 12, 2017. Deputies Josh Whiteman and Brandon Hamilton, Detective Todd Mahle, and Cherie Bronkar testified for the State. Sheila Neman-Carroll and Appellant testified on behalf of the defense.

Appellant was found guilty of Counts 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, and 16. He was found not guilty of Counts 6, 7, 13, and 14. He was sentenced to fifty (50) days of jail on his prior cases on July 12, 2017, immediately after the trial. He was sentenced on the third case on September 18, 2017, to 30 days in jail.

On October 16, 2017, Appellant filed a Notice of Appeal with the Fifth District Court of Appeals.

On December 17, 2018, the Fifth District entered its opinion, affirming in part and reversing in part the decision of the trial court.

ARGUMENT

A defendant may appeal to the Ohio Supreme Court, but is required to show “why a substantial constitutional question is involved, why the case is of public or great general interest, or, in a felony case, why leave to appeal should be granted.” S.Ct.Prac.R. 7.02.

Appellant, Lance Smith, simply rehashes the same arguments he made in the Fifth District Court of Appeals. Appellant fails to state how the Fifth District erred and failed to provide why this Honorable Court should accept jurisdiction.

Appellant claims R.C. 2917.21(B)(2) is unconstitutional by claiming it prohibits too broad of a speech. However, it specifically prohibits speech that harasses, abuses, or threatens. This is not overbroad, nor unconstitutional. Appellant further claims R.C. 2903.211 is unconstitutional; however, Appellant’s argument is that the State failed to prove menacing by stalking.

Appellant claims the Fifth District erred by finding these arguments to be premature; however, the claim is moot at this time because the case was remanded back to the trial court.

The Fifth District did not err; it had these facts and arguments presented before it, reviewed these same facts and arguments, and affirmed the decision of the Muskingum County Court as to these issues. Appellant has presented nothing to support this Court accepting jurisdiction.

CONCLUSION

THEREFORE, based on the foregoing, the Plaintiff-Appellee respectfully requests that the Court DENY jurisdiction to hear Appellant's appeal.

Respectfully Submitted,

/s/ Taylor Bennington

TAYLOR P. BENNINGTON (0097853)
Assistant Prosecuting Attorney
Muskingum County, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the State's Objection To Defendant-Appellant's Memorandum In Support Of Jurisdiction was served upon Elizabeth Gaba, Counsel for Defendant-Appellant, by Regular US Mail, 1231 East Broad Street, Columbus, Ohio 43205, this 1st day of March 2019.

D. MICHAEL HADDOX
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/s/ Taylor Bennington

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